the land sold." The notice in the form of Schedule XXXIII used to notify and advertise this auction was less than foolscap in size, it was printed and typed in very small print and in Jawi and the upset price fixed must have been very modest. Che Zahir has not pleaded breach of this Rule as a ground for invalidating the sale, but it would seem to me that better administrative arrangements could and should be made to prevent valuable lands going for a song, though I say this fully realising the importance to the State of Kedah of expeditious and cheap ways of collecting land revenue. Had a realistic price been obtained for these lands, most probably the plaintiffs would have had no cause for complaint.

Claim dismissed.

Solicitors: *Jayadewa & Zahir; M. Abraham.*

WOK v. FATIMAH

[O.C.J. (Hashim J.) August 7, 1963]

[Kota Bharu — Civil Suit No. 13 of 1961]

Land Laws—Possessory title—Land officer issuing to defendant—Plaintiff's appeal to District Officer and to High Court refused—Plaintiff commencing fresh suit in High Court—Whether plea of res judicata available—Kelantan Land Settlement Ordinance, 1955, ss. 5, 10.

On February 22, 1960 the land officer held an inquiry in respect of the land in question under section 5 of the Kelantan Land Settlement Ordinance, 1955 and gave a possessory title to the defendant. The plaintiff appealed to the District Officer (who dismissed the appeal on May 1, 1960) and subsequently to the High Court which dismissed her appeal on January 14, 1961. The plaintiff then filed the present suit on April 26, 1961. The defence raised the plea of *res judicata* as a preliminary issue.

Held: all that a land officer can do under the Kelantan Land Settlement Ordinance, 1955 is to give a possessory title to the person who is found in possession of the land at the time of the inquiry. This possessory title becomes absolute after the expiration of 3 years from the date of such registration under section 10 of the said Ordinance. As these proceedings were filed well within the period of 3 years the plea of *res judicata* fails.

CIVIL SUIT.

H. L. Wrigglesworth for the plaintiff.

Hashim bin Abdul Hamid for the defendant.

Hashim J.: In this case a preliminary issue has been raised by a plea of *res judicata* by the defence.

The following facts are admitted and not denied:—

(a) On 22nd February 1960 the land officer held an inquiry in respect of Lot 456 Mukim Bechah Palas, Bunut Susu under section 5 of the Kelantan Land Settlement Ordinance, 1955. He gave a possessory title to Che Fatimah binti Awang the defendant in this case.

(b) Wok binti Mat Diah, the plaintiff in this case appealed to the District Officer who dismissed the appeal on 1st May 1960.

(c) Wok again appealed to the High Court which dismissed her appeal on 14th January 1961.

(d) Wok then filed this present suit on 26th April 1961.

The defence is that as Wok's appeal has been dismissed by the High Court she is precluded from bringing in this suit. My interpretation of this Ordinance is that all the land officer can do is to give a possessory title to the person who is found in possession of the land at the time of the inquiry. This possessory title becomes absolute after the expiration of three years from the date of such registration under section 10 of the Ordinance. As these proceedings were filed well within the period of three years I am of the opinion that the plea of *res judicata* fails. The Assistant Registrar, Supreme Court, will now fix a date for the resumed hearing of this case.

Order accordingly.

ABDULLAH v. GLADWIN

[O.C.J. (Winslow J.) August 26, 1963]

[Singapore — Suit No. of 1962]

Damages—Road accident—Personal injury—Brain—Anaesthesia of right side of body—Possibility of injury to spinal cord or brain—Mental stress brought about by litigation—Lack of potency—Change in personality—Possibility of loss of job.

The plaintiff aged 33 years and employed in the Police Force at a salary of $175.00 per month was injured in a road accident. He sustained injuries including a haematoma of the left parietal region of the head. He had internal pains on the right side of the body which had become externally numb. The medical evidence confirmed that (i) the anaesthesia on his right side was due to hysterical or self induced hypnotic state (with probably a slight organic base); (ii) either the spinal cord or the brain had been affected and that there was undoubted brain injury; (iii) stress of litigation had caused severe anxiety neurosis which had retarded his mental faculties; (iv) the plaintiff's personality had not been any better even before the accident; (v) although the plaintiff's condition would improve to a certain extent it was a matter for speculation whether he would improve to any great extent; (vi) that the plaintiff's lack of sexual vigour was due more to mental than to physical causes which may or may not be related to the accident. It was also disclosed in evidence that the Police authorities had been charitable in keeping him in the Police Force after the accident.

Held: although the plaintiff had sustained some injury to his brain or spinal cord there was little evidence of any marked change of personality or loss of earnings as the plaintiff was still employed by the Police Force and was in receipt of his usual salary. General damages assessed at $12,000.

Observations on award of heavy damages in English cases on brain injury or anxiety neurosis.

Cases referred to:—

(1) *Jenkins* v. *Greenwood* (1953) 1 Kemp & Kemp 2nd Edn. 200.

(2) *Thomas* v. *Wells* (1957) 1 Kemp & Kemp 2nd Edn. 210.

(3) *Slipman* v. *London Transport Executive* (1951) 1 Kemp & Kemp 2nd Edn. 672.

ACTION.

P. F. de Souza for the plaintiff.

P. T. Wong for the defendant.

Cur. Adv. Vult.

Winslow J.: In this action the defendant admits liability for negligence in driving his motor-car along Pasir Panjang Road on 10th December, 1959, at about 9.00 p.m. when he knocked down the plaintiff, who was a pedestrian, from behind whilst both were travelling in the same direction.

The only question that arises for determination is the quantum of the general damages which should be awarded to the plaintiff, special damage having been agreed at $87.

He was rendered unconscious by the accident which caused him to sustain injuries including a haematoma of the left parietal region of the head and he was taken to the General Hospital where he was warded. After leaving hospital he carried on his duties in the Police Force as a guard escort. As a result of the accident he was absent for about 73 days on sick leave between the time of the accident and March 1960. Prior to that he had been in good health. He still feels internal pain on the right side of his body which is externally numb as was demonstrated by Professor Ransome who stuck a pin through the upper part of his forearm which provoked no reaction of any kind on the part of the plaintiff. He did not even bleed. Professor Ransome explained that this was due to his hysterical or self-induced hypnotic state. He thought that this anaesthesia on his right side was of hysterical origin although it probably had a slight organic base and he was of the opinion that either the spinal cord or the brain had been affected as a result of the accident and that there was undoubted brain damage. He was further of the opinion that the mental stress brought about by litigation had caused a severe anxiety neurosis which had "slowed him down" and retarded his mental faculties to such an extent as to cause him to look the picture of utter misery which he still presents. He however did not think that the plaintiff's personality had been any better even before the accident. His long history of headaches, loss of sexual vigour, quarrels with his wife and general irritability was consistent with this anxiety state and although the end of litigation would tend to cause his headaches to disappear it would be difficult, in view of the long time that had elapsed between the accident and the trial, for the plaintiff to pull himself together again as his misery appeared to be well settled. His condition would improve to a certain extent after the case. It was largely a state of mind and it was a matter for speculation whether he would in fact improve to any great extent.

The plaintiff is a man of 33 years of age and, since 1962, he has been transferred to lighter duties in the Police Force owing to his inability to remain standing on guard duty for any length of time. He said that if he was awarded something for this case he would ask to appear before a medical board. The evidence certainly shows that unless he pulls himself together again and snaps out of this hysterical or self-hypnotic state into which pending litigation has impelled him it is very doubtful whether anybody will give him any worthwhile job in the future, should he need one, although the Police have, as an act of charity at which Professor Ransome marvelled, retained him in their service.

His wife left him in 1963 because of constant quarrels and assaults whereas they had been happily married prior to the accident and had had two children. The subsequent history of the marriage was, not surprisingly, one of rapidly deteriorating relations, the principle causes being irritability and lack of potency. The wife is still a young woman and said that she hoped the plaintiff would divorce her because he lacked sexual vigour. Professor Ransome, however, did not consider that the right testicular numbness caused by the accident would affect his sex life and it would therefore seem that the plaintiff's lack of sexual vigour is due more to mental than to physical causes which may or may not be related to the accident.

A number of English authorities, there being no reported local ones, were referred to me by his counsel, Mr. P. F. de Souza, which are set out at page 198 *et seq* of Volume I of "The Quantum of Damages" by *Kemp & Kemp*, 2nd Edition. In *Jenkins* v. *Greenwood* [1] the plaintiff, aged 44, a police inspector, sustained severe head injuries requiring 46 stitches and both his wrists were fractured. As a consequence his personality changed. He became permanently unemployable and beyond any complete cure and heavy damages totalling £18,500 were awarded. In *Thomas* v. *Wells* [2] damages of £12,000 were awarded to the plaintiff whose brain was injured in a road accident as a result of which he became liable to epileptic seizures and his personality changed from one of friendliness and sociability to one of violence. He lost his senses of taste and smell, which were important in his trade, and became partly deaf. He also became sexually impotent. In *Slipman* v. *London Transport Executive* [3] the plaintiff, aged 32, suffered no physical injury, but developed a severe neurosis. He was awarded £2,750 general damages. His business suffered and he had to give up work. There was a conflict of medical opinion as to whether the anxiety state caused by litigation would disappear on settlement of the case but the case was decided on the basis that he would recover.

It seems to me from the cases cited above

that heavy damages have in fact been awarded in England in cases such as these where a brain injury has caused a change of personality resulting in partial or permanent unemployability of the victim. Even where no physical injuries have been caused (as in the last case cited) damages have been awarded for an anxiety neurosis state causing business loss. In the present case, however, the plaintiff is still employed in the Police Force, although on lighter duties than before, and is receiving his usual salary of about $175 per month. Although he did not suffer such severe injuries as the plaintiffs in the cases cited, except the last one, he nevertheless sustained some injury to his brain or spinal cord which has contributed to his present condition. There is however little evidence of any marked change of personality or actual loss of earnings as in the English cases and I have to determine the extent of his diminished potential as a husband, a father and a bread-winner.

Although he has not yet retired on medical grounds it is clear from Professor Ransome's opinion that the Police have been charitable in keeping him in the Force at all. As there is no reason to believe that his condition will improve in the near future, although it might, I have to ascertain the sum which would be adequate compensation to him for what he has undergone and for such loss of amenities as he may have suffered as well as for any possible loss of earnings he may incur in the future whilst still handicapped as he is. It is difficult to forecast with any accuracy how quickly, if at all, he will attain normalcy and I have proceeded on the basis that he will eventually recover from the hysterical state brought on by this litigation particularly if a reasonably attractive sum is awarded. In all the circumstances I think that a figure of about $12,000 is the right one and I assess the general damages accordingly.

Order accordingly.

Solicitors: *de Souza & de Souza; P. T. Wong & Co.*

WONG SIEW FONG v. WONG SIEW FONG

[O.C.J. (Gill J.) September 14, 1963]
[K.L. — Divorce Suit No. 3 of 1962]

Husband and Wife—Divorce—Cruelty—Persistent nagging by wife—Assault by husband—Cross-petition—Exercise of discretion—Decree nisi on both.

Constant and persistent nagging by a wife without any justification against a husband resulting in a deterioration of his health amounts to cruelty.

Even though one party is more to blame than the other, the court in the exercise of its discretion may pronounce a decree *nisi* on the petition and the cross-petition.

Cases referred to:—

(1) *Russell* v. *Russell* [1897] A.C. 395.
(2) *King* v. *King* [1953] A.C. 124, 129.
(3) *Horton* v. *Horton* [1940] P. 187, 193.
(4) *Atkins* v. *Atkins* [1942] 2 All E.R. 637, 638.
(5) *Usmar* v. *Usmar* [1949] P. 1, 9.
(6) *Blunt* v. *Blunt* [1943] A.C. 517, 531.
(7) *O'Brien* v. *O'Brien* [1950] W.N. 330.
(8) *Anstey* v. *Anstey and Hartford* [1962] 1 All E.R. 741.

DIVORCE PETITION.

K. A. Menon for the petitioner.

S. T. Chung for the respondent.

Cur. Adv. Vult.

Gill J.: This is a petition for divorce by a husband on the ground of his wife's cruelty consisting of constant and persistent nagging. In answer to the petition the wife has denied cruelty as alleged and cross-petitioned for divorce on the ground of her husband's cruelty consisting of acts of physical violence.

The parties were married on 15th March, 1947 at the Chinese Gospel Hall, Davidson Road, Kuala Lumpur, the petitioner being then twenty-five years of age and the respondent twenty-four. After the marriage they lived and cohabited at various places and finally at No. 26, Yap Kwan Seng Road, Kuala Lumpur which was their permanent matrimonial home until the marriage broke down with the wife leaving the house on 27th September, 1961 and taking the children with her. There are now living four children of the marriage, three daughters and a son. The eldest child, a daughter, was born on the 4th December, 1947 and the youngest, a son, on 20th February, 1957.

During the first year of their marriage the parties stayed in the petitioner's mother's house in Birch Road, Kuala Lumpur. According to the husband, the wife was not very happy with this arrangement because she could not get along very well with the members of his family. The wife, on the other hand, says that they moved out of her husband's mother's house because her husband could not get on with his own mother. Nothing very much turns on this evidence, but I mention this only to remark that I regard the petitioner's story in this connection as being more probable and true.

At the time of the marriage the husband was employed as a clerk in the China Insurance Company, Kuala Lumpur. The wife was working as a clerk in the Malayan Railway, but she resigned her job at her husband's request in 1949, just before her second child was born, in order to look after the house. The husband's salary was about $250 a month, but he supplemented his income by selling insurance after office hours. This involved his having to meet friends and clients after office hours so that he normally came home between 6.00 and 6.30 p.m. The husband has stated in evidence that because he came home late his